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No. 07-1221

In the Supreme Court of the United States

FREDY HUGO PENA-MURIEL, PETITIONER

v.

MICHAEL B. MUKASEY, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Section 1003.23(b)(1) of Title 8, Code of Federal Regulations, provides that an administrative motion to reopen "shall not be made by or on behalf of a person who is the subject of removal, deportation, or exclusion proceedings subsequent to his or her departure from the United States." The question presented is whether the Board of Immigration Appeals erred in relying on that regulation in denying reopening in petitioner's case.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is reported at 489 F.3d 438. The decisions of the Board of Immigration Appeals (Pet. App. 11a) and the immigration judge (Pet. App. 12a-15a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 13, 2007. A petition for rehearing was denied on October 24, 2007. On January 9, 2008, Justice Souter extended the time within which to file a petition for a writ of certiorari to and including March 22, 2008 (Saturday), and the petition was filed on March 24, 2008 (Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101 *et seq.*, as amended, and the Attorney General's regulations implementing it permit an alien to file a motion to reopen proceedings after a final decision has been rendered by an immigration judge (IJ) or the Board of Immigration Appeals (BIA or Board). See 8 U.S.C. 1229a(c)(7)(B) (Supp. V 2005); 8 C.F.R. 1003.23(b)(3) (IJ); 8 C.F.R. 1003.2(c) (BIA). The purpose of a motion to reopen is to present "new facts" that may bear on an alien's eligibility for relief. 8 U.S.C. 1229a(c)(7)(B) (Supp. V 2005); see 8 C.F.R. 1003.2(c)(1).

Until 1996, motions to reopen were entirely a creature of the Attorney General's regulations. See *Dada* v. *Mukasey*, No. 06-1181 (June 16, 2008), slip op. 9-11. In 1952, shortly after the INA was first enacted, the Attorney General proposed, see 17 Fed. Reg. 9989, 9995, and then promulgated, see *id.* at 11,475, 11,476, a regulation regarding the effect of an alien's departure from the United States on the alien's ability to file a motion to reopen. That regulation stated: "A motion to reopen or a motion to reconsider shall not be made by or in behalf of a person who is the subject of deportation proceedings subsequent to his departure from the United States." *Id.* at 11,475 (8 C.F.R. 6.2). The rule that an alien who has departed from the United States may not obtain adjudication of a motion to reopen has been reflected in the Attorney General's regulations ever since. It is presently codified at 8 C.F.R. 1003.23(b)(1) with respect to motions to reopen that are filed with an IJ, and at 8 C.F.R. 1003.2(d)(1) with respect to motions to reopen filed with the BIA.

In 1990, Congress directed the Attorney General to place limits on the number of motions to reopen an alien

could file, specify a maximum time period for filing such motions, and submit a report concerning "abuses associated with the failure of aliens to consolidate requests for discretionary relief before immigration judges at the first hearing on the merits." Immigration Act of 1990, Pub. L. No. 101-649, § 545(c), 104 Stat. 5066. Regulations implementing those directives were proposed in 1994, see 59 Fed. Reg. 29,386, and again in 1995, see 60 Fed. Reg. 24,574 (extending the filing period from 20 days to 90 days), and were promulgated in final form on April 29, 1996, see 61 Fed. Reg. 18,900.

On September 30, 1996, Congress enacted the present statutory time and numerical limits on motions to reopen. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 304(a), 110 Stat. 3009-593. IIRIRA expressly codified several features of the Attorney General's recently promulgated regulations, including the rules that an alien may generally file "one motion to reopen" and that any such motion must generally be filed within 90 days following the entry of a final order of removal. Compare IIRIRA § 304(a), 110 Stat. 3009-593 (8 U.S.C. 1229a(c)(7)(A) and (C)(i) (Supp. V 2005)), with 8 C.F.R. 1003.23(b)(1).

In March 1997, the Attorney General promulgated regulations implementing IIRIRA. 62 Fed. Reg. 10,312. Between 1962 and IIRIRA's 1996 enactment, the INA had provided that an alien who had departed from the United States after the entry of a final order of removal could no longer seek judicial review of that order by way of a petition for judicial review or otherwise. See Act of Sept. 26, 1961, Pub. L. No. 87-301, § 5(a), 75 Stat. 651 (8 U.S.C. 1105a(c) (1994)). Congress had repealed that provision when it enacted IIRIRA, see § 306(b), 110

Stat. 3009-612, see also *Dada*, slip. op. 20, and the Attorney General had received comments arguing that, as a result, the longstanding regulations regarding an alien's ability to file a post-departure administrative motion to reopen were "no longer valid." 62 Fed. Reg. at 10,321; see *ibid.* (observing that commentators had argued that permitting aliens to file post-departure motions to reopen would "promote judicial efficiency and economy").

The Attorney General specifically rejected those contentions. The Attorney General observed that "[n]o provision" of IIRIRA "supports reversing the long established rule that a motion to reopen or reconsider cannot be made in immigration proceedings by or on behalf of a person after that person's departure from the United States." 62 Fed. Reg. at 10,321. The Attorney General also stated "that the burdens associated with the adjudication of motions to reopen and reconsider on behalf of deported or departed aliens would greatly outweigh any advantages this system might render." *Ibid.*

2. Petitioner was admitted to the United States as an immigrant in 1970. Pet. App. 2a. In 1997, he was convicted of domestic assault in Rhode Island state court, and an IJ ordered him removed to Bolivia. *Ibid.* Petitioner did not appeal the IJ's decision to the BIA, and he left the United States at some point thereafter. *Ibid.*; see Pet. 6 (stating that petitioner "did depart the United States [following the 1997 removal order], and has been living abroad since that time"). In 2002, petitioner's 1997 conviction was vacated after the victim filed an affidavit stating that petitioner "should not have been charged," but that "I am not at liberty to explain why." Pet. App. 3a.

3. On May 16, 2002, petitioner filed a motion to reopen his removal proceedings. Pet. App. 14a. The IJ

denied that motion, citing the Attorney General's regulation providing that an alien may not file a motion to reopen with an IJ after departing from the United States. *Ibid.* On February 6, 2003, the BIA adopted and summarily affirmed the IJ's decision. *Id.* at 11a.

4. Petitioner filed a petition for a writ of habeas corpus in the District of Massachusetts. Pet. App. 3a. On May 11, 2005, the President signed into law the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 302, which eliminated habeas corpus jurisdiction to review orders of removal, and prescribes, subject to one exception not at issue here, that "the sole and exclusive means for judicial review of an order of removal" is by way of a petition for review in the appropriate court of appeals. § 106(a)(1), 119 Stat. 310 (8 U.S.C. 1252(a)(5) (Supp. V 2005)). The government moved to transfer the case to the United States Court of Appeals for the First Circuit pursuant to Section 106(c) of the REAL ID Act, see 119 Stat. 311 (8 U.S.C. 1252 note (Supp. V 2005)), and the district court granted the motion. Pet. App. 3a.

5. The court of appeals denied the petition for review. Pet. App. 1a-10a. It first rejected petitioner's contention that the regulation on which the IJ had relied "was inextricably linked to" the statutory provision that had, pre-IIRIRA, barred aliens who had departed the United States from filing a petition for judicial review. *Id.* at 4a (citing 8 U.S.C. 1105a(c) (1994)). The court of appeals explained that because "[t]he Attorney General's authority to prohibit consideration of motions to reopen from aliens who have departed the United States did not originally depend on" that statute, its repeal "d[id] not abrogate the Attorney General's authority to continue to enforce the" regulation. *Id.* at 5a.

The court also rejected petitioner's assertion that Congress's repeal of former Section 1105a(c) "signaled its intent that the Attorney General should no longer enforce" the regulation at issue here. Pet. App. 5a. It noted that petitioner had identified "no statutory language that explicitly addresses the issue," and stated that, as a result, "we must 'defer to a reasonable construction by the agency charged with [the INA's] implementation.'" *Ibid.* (quoting *Barnhart* v. *Thomas*, 540 U.S. 20, 26 (2003)). The court determined that petitioner had "misunderst[ood] * * * the due process concerns expressed in the congressional testimony" by a former General Counsel of the Immigration and Nationalization Service (INS), *id.* at 6a, and stated that the changes made to petition-for-review practice by IIRIRA did "not remotely support an argument that Congress also intended, implicitly, to allow post-departure petitions to reopen a closed administrative proceeding," *id.* at 7a. The court further noted that although "IIRIRA enacted strict time limits for the filing of motions to reopen and limited aliens to a single filing, * * * Congress remained silent regarding the long-standing regulatory bar" against filing motions to reopen after departing from the United States. *Id.* at 7a-8a.

Finally, the court of appeals rejected petitioner's contention "that allowing his deportation order to stand on the basis of a criminal conviction that has since been vacated violates his constitutional right to due process." Pet. App. 8a. The court noted that it and other courts of appeals had stated that "the overturning of a conviction upon which deportability was premised is an appropriate basis for reopening administrative proceedings." *Ibid.* (quoting *De Faria* v. *INS*, 13 F.3d 422, 423 (1st Cir. 1993) (per curiam)). But the court of appeals empha-

sized that "the fact that a vacatur may be an 'appropriate' basis for reopening a deportation order does not establish a due process right to such reopening after one has departed the country," *id.* at 8a-9a, and it noted that all of the decisions cited by petitioner had "involved convictions that were vacated before the removal proceedings had terminated and while [the alien] remained in the country," *id.* at 9a n.2.

The court of appeals acknowledged "that aliens are entitled to due process in deportation proceedings," including "notice of the charges against [them], and a fair opportunity to be heard before an executive or administrative tribunal." Pet. App. 9a. But it observed that petitioner "had been convicted of crimes triggering deportation proceedings" at the time of his removal proceedings, and that he had "made no attempt to vacate his conviction prior to his departure" from the United States. *Ibid.* The court stated that due process "does not require continuous opportunities to attack executed removal orders years beyond an alien's departure from the country," particularly in light of the "strong public interest in bringing finality to the deportation proceedings." *Id.* at 9a-10a.

6. Petitioner filed a petition for panel rehearing, which the court of appeals denied. Pet. App. 16a-17a. In that petition, petitioner argued for the first time that 8 U.S.C. 1229a(c)(7)(A) (Supp. V 2005)—which was added to the INA by IIRIRA and states that "[a]n alien may file one motion to reopen proceedings under this section"—"unambiguously provides an alien the right [to] file a motion to reopen either from within the United States or abroad." Pet. App. 17a. The court of appeals stated that the panel had "not decide[d] whether 8 C.F.R. § 1003.23(b)(1) conflicts with" that statute be-

cause it had "[n]ot * * * been asked to do so," and it refused to "address that issue now on rehearing." *Id.* at 17a.

ARGUMENT

The petition for a writ of certiorari seeks review of three overlapping questions. First, petitioner contends (Pet. 7-13) that the subsequent vacatur of the criminal conviction upon which the final order of removal in his case was based requires that his removal proceeding be reopened. Second, petitioner asserts (Pet. 13-18) that the 1996 repeal of the statutory provision that formerly barred aliens from filing a petition for judicial review while outside the United States renders invalid the Attorney General's longstanding regulations that bar an alien who has departed from the United States from filing an administrative motion to reopen.[1] Third, petitioner argues (Pet. 18-22) that the failure to grant reopening in his particular case violates the Due Process Clause.

The court of appeals' decision is correct and does not conflict with the decisions of any other court of appeals. In addition, petitioner's motion to reopen would also fail for the wholly separate reason that it was untimely under both the INA and the Attorney General's regulations. Further review is not warranted.

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[1] As petitioner observes, the Fourth Circuit has held that the regulation barring post-departure motions to reopen is invalid because it conflicts with 8 U.S.C. 1229a(c)(7)(A) (Supp. V 2005), which provides that "[a]n alien may file one motion to reopen proceedings under this section." Pet. 18 n.2 (citing *Williams* v. *Gonzales*, 499 F.3d 329 (4th Cir. 2007)). The court of appeals expressly declined to consider that argument because petitioner never advanced it until his petition for rehearing. See *id.* at 18a.

1. a. Petitioner's first contention (Pet. 7-13) is that the vacatur of his 1997 conviction requires that his removal proceedings be reopened. The petition for a writ of certiorari does not identify the precise basis for that claim, or even whether it is constitutional or statutory in nature. Before the court of appeals, however, petitioner expressly cast the claim as a constitutional one, see Pet. C.A. Br. 2 (stating that "Because [Petitioner's] Conviction Has Been Vacated on the Merits, Due Process Requires That it No Longer Serve as the Basis For Removal"), and the court of appeals understood and resolved it in those terms. See Pet. App. 8a-9a.

As he did before the court of appeals (see Pet. App. 8a), petitioner cites a number of court of appeals and BIA decisions that state that "the overturning of a conviction upon which deportability was premised is an appropriate basis for reopening administrative proceedings." Pet. 7 (quoting *De Faria* v. *INS*, 13 F.3d 422, 423 (1st Cir. 1993) (per curiam)); see Pet. 7-10. But petitioner makes no attempt to refute the court of appeals' response that "the fact that a vacatur may be an 'appropriate' basis for reopening a deportation order does not establish a due process right to such reopening after one has departed the country." Pet. App. 8a-9a. Nor does petitioner deny that all of the decisions upon which he relied below "involved convictions that were vacated before the removal proceedings had terminated and while [the alien] remained in the country." *Id.* at 9a n.2.

b. In this Court, petitioner also cites a number of decisions in which the Ninth Circuit has held that the Attorney General's regulations do not deprive an IJ or the Board of authority to consider a motion to reopen filed by an alien who was removed from the United States as a result of a criminal conviction that was sub-

sequently vacated. See Pet. 10-13 (citing *Cardoso-Tlaseca* v. *Gonzales*, 460 F.3d 1102 (2006), *Wiedersperg* v. *INS*, 896 F.2d 1179 (1990), and *Estrada-Rosales* v. *INS*, 645 F.2d 819 (1981)). Those decisions, however, involved the proper interpretation of the relevant regulations, rather than their validity. See *Cardoso-Tlaseca*, 460 F.3d at 1106 n.2 ("Because we hold that the BIA made a legal error when it determined that the regulation barred [the alien's] motion to reopen[,] * * * we do not decide the issue of the regulation's validity."); see also *Estrada-Rosales*, 645 F.2d at 820-821 (concluding that the term "departed" in the regulations is properly understood to be "a 'legally executed' departure when effected by the government," and holding that "a deportion based upon an invalid conviction is * * * not 'legally executed'"); accord *Wiedersperg*, 896 F.2d at 1181-1182 (same). In the court of appeals, petitioner did not seek relief on the ground that the BIA had misapplied the Attorney General's regulations in denying his motion to reopen. Accordingly, he has forfeited any entitlement to seek reversal of the court of appeals' judgment on that ground.

In any event, petitioner's current motion falls squarely within the Attorney General's regulations. With respect to motions to reopen filed with an IJ, the regulations provide: "A motion to reopen * * * shall not be made by or on behalf of a person who is the subject of removal, deportation, or exclusion proceedings subsequent to his or her departure from the United States." 8 C.F.R. 1003.23(b)(1); accord 8 C.F.R. 1003.2.(d) (similar rule for motions to reopen filed with the BIA). Because petitioner's motion expressly acknowledged that he was not currently in the United

States, the IJ correctly concluded that it lacked authority to consider it. Pet. App. 15a.

Finally, there is no conflict between the Ninth Circuit decisions cited above and the decision of the court below. The theory underlying the Ninth Circuit decisions is that an alien who has been physically removed from the United States by an act of the government has not made a "departure" unless that removal was "legally executed." See *Estrada-Rosales*, 645 F.2d at 820; accord *Mendez* v. *INS*, 563 F.2d 956, 958-959 (9th Cir. 1977) (explaining, in the course of adopting a similar construction of the term "departed" in former 8 U.S.C. 1105a(c) (1976), that a contrary interpretation would "thwart the jurisdiction of this court in a case where the alien had been 'kidnaped' and removed").[2] Here, in contrast, petitioner left the United States on his own initiative. After the IJ ordered him removed, petitioner could have—but did not—seek further review or a stay of that order, first from the BIA and then from the appropriate court of appeals. Cf. *Cardoso-Tlaseca*, 460 F.3d at 1104 (noting that alien had "timely appealed" the IJ's order of removal to the BIA); *Wiedersperg*, 896 F.2d at 1180 (same); *Estrada-Rosales*, 645 F.2d at 820 (stating that the alien had been deported "after * * * unsuccessfully attempt[ing] to obtain a stay"). Nor did petitioner—again, unlike the aliens in all of the Ninth Circuit decisions upon which he relies—seek to vacate his

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[2] In addition to *Mendez*, petitioner cites a variety of other pre-IIRIRA decisions that involved whether there were circumstances in which an alien who was no longer physically present in the United States could file a petition for judicial review notwithstanding former 8 U.S.C. 1105a(c) (1976). See Pet. 10-11. That issue is not presented here. And because Section 1105a(c) was repealed in 1996, it lacks any prospective significance as well.

criminal conviction at any point before his departure from the United States. See *Cardoso-Tlaseca*, 460 F.3d at 1104; *Wiedersperg*, 896 F.2d at 1180; *Estrada-Rosales*, 645 F.2d at 820. In fact, petitioner made no attempt to have his conviction vacated until March 2002, more than four years after the IJ ordered him removed.

2. Petitioner also renews his contention (Pet. 13-18) that the regulations barring a post-departure motion to reopen are no longer valid after the repeal of former 8 U.S.C. 1105a(c) (1994). The court of appeals correctly rejected that contention, and petitioner has not asserted that its holding on this point conflicts with the decisions of another court of appeals.

The Attorney General has been granted broad authority to interpret the INA and issue regulations to carry out his authority. See 8 U.S.C. 1103(a)(1) and (3), (g) (2000 & Supp. V. 2005). The rule that an alien who has departed from the United States may not pursue further administrative relief by way of a motion to reopen has been part of the Attorney General's regulations since 1952, nine years *before* the initial enactment of the now-repealed statute with which petitioner erroneously contends that the regulations are "inextricably linked" (Pet. 16). See pp. 2-4, *supra*.[3] Accordingly, "the removal of that statutory language by IIRIRA does not abrogate the Attorney General's authority to continue to

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[3] Petitioner errs in asserting (Pet. 16) that the regulations governing motions to reopen assumed their current language shortly after the enactment of the legislation that first enacted former 8 U.S.C. 1105a(c) (1994). To the contrary, the pertinent language of the redesignated regulation that took effect on January 22, 1962, is identical to that contained in the 1952 regulation. Compare 17 Fed. Reg. at 11,475, 11,476 (promulgating 8 C.F.R. 6.2), with 27 Fed. Reg. 96-97 (1962) (promulgating 8 C.F.R. 3.2).

enforce the limitations of 8 C.F.R. § 1003.23(b)(1)." Pet. App. 5a.

Petitioner contends that the Attorney General's decision to retain the regulations following IIRIRA's enactment is inconsistent with Congress's "overall goal of balancing more effective removal procedures with the demands of due process." Pet. 14; see Pet. 15, 17-18. This Court, however, has held "that principles of *Chevron* deference are applicable to this statutory scheme." *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 424 (1999). Accordingly, because the INA itself does not speak directly to the question at hand, the only remaining question is whether the regulations are based "on a permissible construction of the statute." *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 843 (1984)).

The Attorney General's rule that an alien who has departed from the United States may not seek to reopen the removal proceeding that precipitated that departure is entirely reasonable. Its premise is that because the whole purpose of the administrative proceedings is to effect the alien's removal from the United States, those proceedings are properly deemed terminated if the alien departs.

Nor did the Attorney General act unreasonably in determining that Congress's decision in IIRIRA to repeal the statutory provision that had previously prevented aliens from pursuing petitions for judicial review from abroad did not require a change with respect to motions to reopen. As the court of appeals explained, the repeal of the petition-for-review provision was part and parcel of Congress's efforts to expedite the removal of removable aliens from the United States while still "protecting the alien's *first* opportunity to challenge a deportation order *in court*." Pet. App. 7a (emphases

added). But "[t]hat change does not remotely support an argument that Congress also intended, implicitly, to allow post-departure petitions to *reopen* a closed *administrative* proceeding," *ibid.*(emphases added), particularly in light of the "disfavor[]" in which such motions are held, *INS* v. *Doherty*, 502 U.S. 314, 323 (1992), and the longstanding nature of the Attorney General's contrary regulations, see *Stone* v. *INS*, 514 U.S. 386, 398 (1995) (stating that Congress is presumed to be aware of "the longstanding view[s] of the INS" when it makes amendments to the INA); *CFTC* v. *Schor*, 478 U.S. 833, 846 (1986) ("[W]hen Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.") (internal quotation marks and citations omitted)).[4]

3. Petitioner's final contention is that, in light of the "specific" (Pet. 18) and "unique" (Pet. 22) facts of his particular case, his continued exclusion from the United States violates the Due Process Clause. The court of appeals correctly rejected that factbound claim, and its

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[4] In *Dada* v. *Mukasey*, No. 06-1181 (June 16, 2008), the Court concluded that there was an "untenable conflict between" various statutory and regulatory provisions governing voluntary departure and motions to reopen, which it resolved by holding that "to safeguard the right to pursue a motion to reopen for voluntary departure recipients, the alien must be permitted to withdraw, unilaterally, a voluntary departure request before expiration of the departure period." *Id.* at 18-19. Although the Court suggested that "[a] more expeditious solution [to that conflict] * * * might be to permit an alien who has departed the United States to pursue a motion to reopen," *id.* at 19-20, this case presents no conflict to resolve because petitioner neither sought nor was granted voluntary departure in connection with the 1997 removal order.

decision does not conflict with any decision of this Court or another court of appeals.

As the court of appeals explained (Pet. App. 9a), the Due Process Clause entitled petitioner to "notice of the charges against him, and a fair opportunity to be heard before an executive or administrative tribunal." Accord *Kwong Hai Chew* v. *Colding*, 344 U.S. 590, 596-598 (1953). Petitioner was ordered removed after a hearing before an IJ, and he does not contend that there was anything procedurally defective about that hearing. Petitioner could have filed an administrative appeal to the BIA, but he failed to do so. Pet. App. 2a. As a result, the IJ's order automatically converted into a final order of removal, see 8 U.S.C. 1101(a)(47)(B)(ii), and petitioner lost his ability to seek judicial review in the appropriate court of appeals, see 8 U.S.C. 1252(d)(1) (stating that "[a] court may review a final order of removal only if * * * the alien has exhausted all administrative remedies available to the alien as of right"). Petitioner then chose to depart from the United States on his own accord and without seeking a stay of removal, and he did so despite the Attorney General's longstanding regulations providing that an alien who so departs may not file a later motion to reopen his removal proceedings. As the court of appeals correctly explained (Pet. App. 9a-10a), "[d]ue process does not require continuous opportunities to attack executed removal orders years beyond an alien's departure from the country." See *INS* v. *Abudu*, 485 U.S. 94, 107 (1988) (noting the "strong public interest in bringing litigation to a close as promptly as is consistent with the interest in giving the adversaries a fair opportunity to develop and present their respective cases.").

4. There is an additional reason why further review is not warranted in this case. The INA provides that, subject to certain exceptions not at issue here, a motion to reopen "shall be filed within 90 days of the date of entry of a final administrative order of removal." 8 U.S.C. 1229a(c)(7)(C)(i) (Supp. V 2005); accord 8 C.F.R. 1003.2(b)(1). Because petitioner did not appeal the IJ's August 14, 1997, decision to the BIA, see Pet. App. 13a-14a, that decision converted automatically into a final order of removal 30 days later, see 8 U.S.C. 1101(a)(47)(B)(ii); 8 C.F.R. 1003.3(a)(2). The motion to reopen at issue here was not filed until May 2002, more than four years after the expiration of the 90-day deadline for filing a motion to reopen. Pet. App. 14a. Although the court of appeals did not rely upon the untimeliness of petitioner's motion in denying the petition for judicial review, it provides an additional reason why the result in petitioner's case would be exceedingly unlikely to change even were this Court to grant review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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